

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 103.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby adopts new Chapter 310, "Sustainable Design Standards," Iowa Administrative Code.

Iowa Code section 103A.8B was newly enacted in 2008. It authorizes and requires the Building Code Commissioner, with the approval of the Building Code Advisory Council, to establish sustainable design or green building standards. These standards will be part of the State Building Code but will apply to construction projects only if triggered by another provision of law. During 2008, the standards proposed herein were applied to establish eligibility for enhancements to tax credits that apply to development in designated brownfield and grayfield areas.

The rules adopted herein are considered by the Building Code Commissioner to be the start of an ongoing process of development of sustainable design standards for the state of Iowa. Major developments are occurring in the evolution of these standards, and significant changes are likely to occur in the next few years, so it is anticipated that there will be periodic revisions to these standards on an ongoing basis. Nevertheless, it is essential that initial standards be in place by July 1, 2009, as they are specified to be the basis for awarding enhanced tax credits for projects being developed in designated grayfield and brownfield areas.

Notice of Intended Action proposing these rules was published in the Iowa Administrative Bulletin as **ARC 7657B** on March 25, 2009. A public hearing to accept comment on the proposed rules was held on April 14, 2009. Numerous comments were received.

Iowa Code section 103A.8B requires the Building Code Commissioner to obtain recommendations from the Office of Energy Independence and the Department of Natural Resources prior to adoption of these rules. Both agencies provided recommendations indicating agreement with the rules as proposed in the Notice of Intended Action.

A request was received from the Home Builders Association of Iowa to add the National Green Building Standard, which is published by the International Code Council, to the options available to obtain approval as a sustainably designed project for residential construction. Several comments were received from others supporting the use of the National Green Building Standard only if a higher level of certification within the system specified therein was used. At the direction of the Building Code Advisory Council, use of the National Green Building Standard with certification at the bronze, or lowest, level was incorporated as an option for approval as a sustainably designed project for residential construction only.

A request was received from the Green Building Institute to add the Green Globes assessment system to the options available for approval as a sustainably designed project. It was impractical to fully consider this request prior to the adoption of these rules, but the Building Code Commissioner intends to consider the addition of the Green Globes assessment system to the options available for sustainably designed projects in the future.

The American Chemistry Council endorsed the use of the energy standard for commercial construction published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) in ASHRAE 90.1-2007, as specified in the proposed rules and included in the rules as adopted herein, but recommended that projects be approved as sustainably designed only if they result in 25 percent less energy use than would result from minimal compliance with the standard. This recommendation was not adopted. The American Chemistry Council also asked that all green building rating systems be treated equally. Philosophically, the Building Code Commissioner agrees that various rating systems should be allowed as a basis for approval of sustainably designed projects, but it is essential that each rating system be evaluated independently. Additional systems will be considered for inclusion if their use is formally proposed and documentation regarding the basis for each system is provided to the Building Code Commissioner.

The Master Builders of Iowa submitted comments raising several questions, including a recommendation that the rules be clarified to stipulate that only the Building Code Commissioner may make a determination as to whether or not a project is sustainably designed. This suggestion was included in the adopted rules to ensure consistency regarding these determinations.

The Iowa Association of School Boards submitted comments, including a recommendation that the level of Leadership in Energy and Environmental Design (LEED) certification required be less than the gold level. The Building Code Commissioner and the Building Code Advisory Council elected to retain the use of the gold level for projects seeking tax credits or tax refunds on the basis of compliance with the standards but adopted the use of the silver level of certification for other projects to meet sustainable design standards. Any school construction projects that may be subject to these standards in the future are likely to fall into this latter category.

Another commenter also objected to the requirement to achieve gold-level certification under the LEED Green Building Rating System, administered by the U.S. Green Building Council, contending that this requirement is too restrictive. The same commenter also asked that a specific edition of LEED be identified. The request to identify a specific version of LEED was adopted in these rules. Version 3.0 of LEED, which became available on April 27, 2009, is used wherever LEED is referenced.

A comment was received proposing that a committee of technical experts be established to advise the Building Code Commissioner when questions arise regarding equivalency between different systems for determining whether construction projects are sustainably designed. Although the rules do not provide for such a committee, the Building Code Commissioner agrees with this suggestion and plans to form an advisory committee of technical experts to advise on equivalency issues, especially when application is made to use a sustainable design framework other than those explicitly referenced in these rules.

An additional editorial change made from the proposed rules was a modification of the definition of “residential” to be consistent with the definitions used in the International Building Code and the International Residential Code, which are adopted by reference in the State Building Code of Iowa.

The Preamble to the Notice of Intended Action solicited comments about sustainable design standards appropriate for Web portal businesses and data centers. No recommendations were received. There is an urgent need to identify such standards, and the Building Code Commissioner renews the request for submission of recommendations for sustainable design standards for these facilities. It is the intent of the Building Code Commissioner to adopt such standards at the earliest practicable opportunity, possibly through an emergency rule making.

These rules are intended to implement Iowa Code section 103A.8B.

These rules will become effective July 1, 2009.

The following amendment is adopted.

Adopt the following **new** 661—Chapter 310:

CHAPTER 310  
SUSTAINABLE DESIGN STANDARDS

**661—310.1(103A) Scope and purpose.**

**310.1(1) Scope.** The standards established in this chapter apply to building construction projects in Iowa and are based upon state or federal statutory requirements; administrative rules adopted by state agencies that own, manage, regulate, or finance building construction projects; or federal regulations.

**310.1(2) Purpose.** The purpose of the standards and requirements included in this chapter is to promote sustainable design in building construction, which is defined as construction that meets current needs while not compromising the needs of future generations. Sustainable design standards are intended to minimize the adverse environmental impacts of construction and the built environment.

**661—310.2(103A) Definitions.** The following definitions apply to rules 661—310.1(103A) through 661—310.6(103A):

“*Commercial*” means a building construction project that is not residential.

“*Commissioner*” means the building code commissioner.

“*Residential*” means a building construction project that involves a building or buildings, each of which is a detached one- or two-family dwelling or which consists of townhouses not more than three stories above grade in height with a separate means of egress to the exterior of the building for each dwelling unit and consisting entirely of dwelling units and their accessory structures.

**661—310.3(103A) Submission of projects.**

**310.3(1) Approval of building code commissioner required.** Approval of a construction project as sustainably designed pursuant to these rules may be granted only by the building code commissioner. All requests for approval of a project as sustainably designed must be submitted to the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319.

**310.3(2) Building code approval required.** No building construction project shall be approved as a sustainably designed project pursuant to these rules unless construction plans for the project have been approved by the building code commissioner as meeting the state building code or by a local building department as meeting the applicable local building code.

**310.3(3) Projects subject to state building code.** If approval as a sustainably designed project is requested for a project that is otherwise subject to the state building code, the submission materials required by 661—Chapter 300 shall include a statement that approval for the project as sustainably designed is being requested.

**310.3(4) Projects subject to local building codes.** If approval from the building code commissioner is sought for a project that is subject to a local building code and code enforcement, construction plans shall be submitted to the building code bureau as provided in 661—Chapter 300, with a cover letter stating that approval of the project as a sustainably designed project is being requested and that the project has been submitted for review to the local building department. Evidence of approval of the construction plans by the local building department shall be submitted to the building code bureau prior to issuance of the commissioner’s approval of the project as a sustainably designed project.

**310.3(5) Projects not otherwise subject to state or local building codes.** If approval as a sustainably designed project is sought for a building construction project that is otherwise not subject to the state building code or a local building code, construction plans for the project shall be submitted to the building code bureau and the project shall be subject to the state building code and to procedures and fees for review of construction plans and inspections as provided in 661—Chapter 300. The cover letter transmitted with the plans shall state that approval as a sustainably designed project is being requested and that the project is not subject to a local building code enforced by a local jurisdiction.

**310.3(6) Application form.** A completed application form prescribed by the commissioner shall be included with the submission of the construction plans for review of any project for which approval as a sustainably designed project is requested.

**661—310.4(103A) Sustainable design criteria for residential projects.** A residential building construction project shall be approved as sustainably designed if it meets any of the following requirements:

**310.4(1)** Satisfaction of all of the mandatory criteria of the Iowa green streets criteria described in the publication Iowa Green Streets Criteria, published by the Iowa department of economic development, community development division; or

**310.4(2)** Compliance with ICC 700-2008, National Green Building Standard, published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, D.C. 20001, at the bronze level; or

**310.4(3)** Satisfaction of any alternative set of criteria submitted in advance to the commissioner and approved by the commissioner as equivalent to the requirements of either subrule 310.4(1) or 310.4(2).

**661—310.5(103A) Sustainable design criteria for commercial projects.** A commercial building construction project shall be approved as sustainably designed if it meets the following applicable requirements:

**310.5(1)** If approval as a sustainably designed project is being sought in order to qualify for a tax credit or tax refund, the project shall be approved as sustainably designed if the building receives certification from the United States Green Building Council at the gold level or better in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, version 3.0; and if the building complies with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329.

EXCEPTION: If a good-faith effort has been made to obtain certification at the gold level or above in the LEED Green Building Rating System, version 3.0, and certification at the gold level has not been obtained, but certification at the silver level has been obtained, application may nonetheless be made to the building code commissioner for approval as a sustainably designed project. The commissioner may approve the project as sustainably designed provided that the building is fully in compliance with ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329, and demonstration is made to the satisfaction of the building code commissioner that a good-faith effort to achieve certification at the gold level was made and that the project demonstrates an emphasis on energy conservation.

**310.5(2)** If approval as a sustainably designed project is being sought other than for the purpose of obtaining a tax credit or tax refund, the project shall be approved as sustainably designed if the building receives certification from the United States Green Building Council at the silver level or better in the LEED Green Building Rating System, version 3.0; and if the building complies with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329.

EXCEPTION: If a good-faith effort has been made to obtain certification at the silver level or above in the LEED Green Building Rating System, version 3.0, and certification at the silver level or above has not been obtained, but certification has been obtained, application may nonetheless be made to the building code commissioner for approval as a sustainably designed project. The commissioner may approve the project as sustainably designed provided that the building is fully in compliance with ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329, and demonstration is made to the satisfaction of the building code commissioner that a good-faith effort to achieve certification at the silver level was made and that the project demonstrates an emphasis on energy conservation.

**310.5(3)** If the project includes only the following commercial structures, the project shall be approved as sustainably designed if it satisfies all of the mandatory criteria of the Iowa green streets criteria:

- a. Day care centers.
- b. Vocational rehabilitation centers.
- c. Community centers.
- d. Senior centers.

EXCEPTION: Application may be made to the building code commissioner to accept satisfaction of all of the mandatory criteria of the Iowa green streets criteria, published by the Iowa department of economic development, community development division, as the basis for approval of other commercial projects as sustainably designed. Such submission should be limited to smaller commercial projects, and approval as a sustainably designed project is at the discretion of the building code commissioner, who shall award such approval only if the building code commissioner is convinced that the Iowa green streets criteria are applicable to the project. Written approval for use of the Iowa green streets criteria pursuant to this exception shall be sought and obtained prior to submission of an application for approval as a sustainably designed project.

**310.5(4)** The building satisfies any alternative set of criteria submitted in advance to the commissioner and approved by the commissioner as equivalent to the requirements set forth in subrule 310.5(1) or 310.5(2), as applicable.

**661—310.6(103A) Fees.**

**310.6(1)** *Projects subject to the state building code.* For any project for which approval as a sustainably designed project is requested from the commissioner and which is otherwise subject to the state building code, the additional fee for review for compliance with sustainable design standards shall be \$100, which shall be paid prior to review of the application.

**310.6(2)** *Projects subject to local building codes and code enforcement.* For any project approved by a local building department as compliant with the local building code and for which approval as a sustainably designed project is requested, a fee of \$250 shall apply and shall be paid prior to the commissioner's review of the application for approval as a sustainably designed project.

**310.6(3)** *Projects not otherwise subject to a building code.* For any project for which approval as a sustainably designed project is requested and which is not otherwise subject to a building code, the plan review fee shall be the same as the plan review fee for the project established in 661—subrule 300.4(2). An additional fee of \$100 for review for compliance with the requirements set forth in this chapter shall apply and shall be paid prior to review of the plan.

These rules are intended to implement Iowa Code section 103A.8B.

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